

## **OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES**

### **ERRATA NOTICE**

The Administrator of the Office of Documents and Administrative Issuances, pursuant to the authority set forth in section 309 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1203; Pub. L. 90-614, D.C. Official Code § 2-559), hereby gives notice that the following Emergency and Proposed Rulemaking was not published in the District of Columbia Register on October 1, 2010, as planned. The Emergency and Proposed Rulemaking amends section 6508 of Chapter 65 “Medicaid Reimbursement to Nursing Facilities,” of Title 29 “Public Welfare,” of the District of Columbia Municipal Regulations (DCMR).

Pursuant to the authority set forth in section 6 of the Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1206, Pub. L. 90-614, D.C. Official Code § 2-505(c)), the emergency rules went into effect on the day they were signed by the Director of the District of Columbia Department of Health Care Finance. The Medicaid Reimbursement to Nursing Facilities Emergency and Proposed Rules will be published on October 8, 2010 in the D.C. Register.

Inquiries regarding this notice shall be addressed by mail to Administrator, Office of Documents and Administrative Issuances, 441 4<sup>th</sup> Street, N.W., Suite 520 South, Washington, D.C. 20001 or via telephone at (202) 727-5090.

Inquiries regarding the emergency and proposed rules shall be directed, in writing, to Julie Hudman, Ph.D., Director, Department of Health Care Finance, 825 North Capitol Street, N.E., 6th Floor, Washington, D.C. 20002. Copies of the proposed rule may be obtained from the same address.

## **DEPARTMENT OF HEALTH CARE FINANCE**

### **NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes approved December 27, 1967 (81 Stat.774; D.C. Official Code §1-307.02) and section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code §7-771.05(6)), hereby gives notice of the adoption, on an emergency basis, of an amendment to section 6508 of Chapter 65, "Medicaid Reimbursement to Nursing Facilities" of Title 29, "Public Welfare," of the District of Columbia Municipal Regulations (DCMR).

Each nursing facility located in the District of Columbia participating in the Medicaid program is reimbursed on a prospective basis, at a facility-specific per diem rate. The facility-specific per diem rate is developed by establishing a base year per diem rate for each facility, adjusted semi-annually for case-mix, adjusted annually for inflation and subject to other adjustments. These proposed rules will eliminate the annual inflation adjustment effective October 1, 2010. DHCF projects for FY 2011 a decrease in aggregate expenditures of \$4.8 million dollars as a result of the elimination of the inflation adjustment.

In Fiscal Years 2009 and 2010, the District experienced an unprecedented growth in unemployment from 5.7% to 11%. During this period, the Medicaid program has experienced huge pressures in enrollment. Emergency action is required to preserve the health, welfare and safety of District residents during this crisis, since DHCF must reduce spending to pay for the health care needs of District residents.

DHCF is also amending the District of Columbia State Plan for Medical Assistance (State Plan) to reflect these changes. The State Plan amendment will be submitted to the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for approval. These rules shall become effective for services rendered on or after October 1, 2010, if the corresponding State Plan amendment has been approved by CMS with an effective date of October 1, 2010, or the effective date established by CMS in its approval of the corresponding State Plan amendment, whichever is later. These rules are also contingent upon approval by the Council of the corresponding State Plan amendment. If approved, DHCF will publish a notice which sets forth the effective date of the rules.

The emergency rulemaking was adopted on September 13, 2010, and shall become effective for services rendered on or after October 1, 2010 subject to CMS approval. The emergency rules shall remain in effect for one hundred twenty (120) days or until January 10, 2011, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to adopt this proposed rule not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

**Section 6508, “FINAL PER DIEM RATE CALCULATION,” of Chapter 65, “MEDICAID REIMBURSEMENT TO NURSING FACILITIES,” of Title 29, “PUBLIC WELFARE,” of the DCMR is amended by amending Subsection 6508.1 to read as follows:**

**6508 FINAL PER DIEM RATE CALCULATION**

6508.1 Each nursing facility’s per diem rate shall be the sum of subsections (a), (b), and (c) as set forth below:

- (a) The nursing and resident care base year cost per diem, which shall be calculated as follows:
  - (1) Effective January 1, 2006, through September 30, 2007, the nursing and resident care base year per diem established pursuant to section 6505, adjusted for inflation to March 30, 2003, using the CMS Prospective Payment System Skilled Nursing Facility Input Price Index (CMS Index).
  - (2) Effective October 1, 2007, through September 30, 2008, the nursing and resident care base year per diem calculated pursuant to subsection 6508.1(a)(1), adjusted for inflation using the CMS Index for District Fiscal Years 2006, 2007, and 2008.
  - (3) Effective October 1, 2009, through September 30, 2010, the nursing and resident care base year per diem calculated pursuant to subsection 6508.1(a)(1) and (2), adjusted for inflation using the CMS Index for District Fiscal Year 2010.
  - (4) Effective October 1, 2010, and thereafter, the nursing and resident base year per diem calculated pursuant to subsection 6508.1(a)(3).
- (b) The routine and support base year cost per diem, which shall be calculated as follows:
  - (1) Effective January 1, 2006, through September 30, 2007, the routine and support base year per diem established pursuant to section 6506, adjusted for inflation to March 30, 2003, using the CMS Index.
  - (2) Effective October 1, 2007, through September 30, 2008, the routine and support base year per diem calculated pursuant

to subsection 6508.1(b)(1), adjusted for inflation using the CMS Index for District Fiscal Years 2006, 2007, and 2008.

- (3) Effective October 1, 2009, through September 30, 2010, the routine and resident base year per diem calculated pursuant to subsection 6508.1(b)(1) and (2), adjusted for inflation using the CMS Index for District Fiscal Year 2010.
  - (4) Effective October 1, 2010, and thereafter, the nursing and resident base year per diem calculated pursuant to subsection 6508.1(b)(3).
- (c) The capital-related base year cost per diem, which shall be calculated as follows:
- (1) Effective January 1, 2006, through September 30, 2007, the capital-related base year per diem established pursuant to section 6507, adjusted for inflation to March 30, 2003, using the CMS Index. The inflation adjustment in this subparagraph shall not be applied to depreciation, amortization, and interest on capital related expenditures.
  - (2) Effective October 1, 2007, through September 30, 2008, the capital-related base year per diem calculated pursuant to subsection 6508.1(c)(1), adjusted for inflation using the CMS Index for District Fiscal Years 2006, 2007, and 2008. The inflation adjustment in this subparagraph shall not be applied to depreciation, amortization and interest on capital related expenditures.
  - (3) Effective October 1, 2009, through September 30, 2010, the capital-related base year per diem calculated pursuant to subsection 6508.1(c)(1) and (2), adjusted for inflation using the CMS Index for District Fiscal Year 2010. The inflation adjustment in this subparagraph shall not be applied to depreciation, amortization and interest on capital related expenditures.
  - (4) Effective October 1, 2010, and thereafter, the capital-related base year per diem calculated pursuant to subsection 6508.1(c)(3).

Comments on the proposed rules shall be submitted, in writing, to Julie Hudman, Ph.D., Director, Department of Health Care Finance, 825 North Capitol Street, N.E., 6<sup>th</sup> Floor, Washington, D.C. 20002, within thirty (30) days after the date of publication of this

notice in the *D.C. Register*. Copies of the proposed rule may be obtained from the same address.